

Introduced by Senator Poochigian

February 22, 2005

An act to amend Sections 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 864, as introduced, Poochigian. Sexually violent predators: term of commitment.

Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation.

Existing law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for a 2-year term for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

This bill would, instead, authorize the commitment for an indeterminate term, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6604 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 6604. The court or jury shall determine whether, beyond a
- 4 reasonable doubt, the person is a sexually violent predator. If the
- 5 court or jury is not satisfied beyond a reasonable doubt that the
- 6 person is a sexually violent predator, the court shall direct that

1 the person be released at the conclusion of the term for which he
2 or she was initially sentenced, or that the person be
3 unconditionally released at the end of parole, whichever is
4 applicable. If the court or jury determines that the person is a
5 sexually violent predator, the person shall be committed for ~~two~~
6 ~~years an indeterminate term~~ to the custody of the State
7 Department of Mental Health for appropriate treatment and
8 confinement in a secure facility designated by the Director of
9 Mental Health, ~~and the person shall not be kept in actual custody~~
10 ~~longer than two years unless a subsequent extended commitment~~
11 ~~is obtained from the court incident to the filing of a petition for~~
12 ~~extended commitment under this article or unless the term of~~
13 ~~commitment changes pursuant to subdivision (c) of Section 6605.~~
14 ~~Time spent on conditional release shall not count toward the~~
15 ~~two-year term of commitment, unless the person is placed in a~~
16 ~~locked facility by the conditional release program, in which case~~
17 ~~the time in a locked facility shall count toward the two-year term~~
18 ~~of commitment.~~ The facility shall be located on the grounds of an
19 institution under the jurisdiction of the Department of
20 Corrections.

21 SEC. 2. Section 6604.1 of the Welfare and Institutions Code
22 is amended to read:

23 6604.1. (a) ~~The two-year indeterminate term of commitment~~
24 ~~provided for in Section 6604 shall commence on the date upon~~
25 ~~which the court issues the initial order of commitment pursuant~~
26 ~~to that section. The initial two-year term shall not be reduced by~~
27 ~~any time spent in a secure facility prior to the order of~~
28 ~~commitment. For any subsequent extended commitments, the~~
29 ~~term of commitment shall be for two years commencing from the~~
30 ~~date of the termination of the previous commitment.~~

31 (b) The person shall be evaluated by two practicing
32 psychologists or psychiatrists, or by one practicing psychologist
33 and one practicing psychiatrist, designated by the State
34 Department of Mental Health. The provisions of subdivisions (c)
35 to (i), inclusive, of Section 6601 shall apply to evaluations
36 performed for purposes of extended commitments. The rights,
37 requirements, and procedures set forth in Section 6603 shall
38 apply to ~~extended~~ *all* commitment proceedings.

39 SEC. 3. Section 6605 of the Welfare and Institutions Code is
40 amended to read:

1 6605. (a) A person found to be a sexually violent predator
2 and committed to the custody of the State Department of Mental
3 Health shall have a current examination of his or her mental
4 condition made at least once every year. The person may retain,
5 or if he or she is indigent and so requests, the court may appoint,
6 a qualified expert or professional person to examine him or her,
7 and the expert or professional person shall have access to all
8 records concerning the person.

9 (b) The director shall provide the committed person with an
10 annual written notice of his or her right to petition the court for
11 conditional release under Section 6608. The notice shall contain
12 a waiver of rights. The director shall forward the notice and
13 waiver form to the court with the annual report. If the person
14 does not affirmatively waive his or her right to petition the court
15 for conditional release, the court shall set a show cause hearing to
16 determine whether facts exist that warrant a hearing on whether
17 the person's condition has so changed that he or she would not be
18 a danger to the health and safety of others if discharged. The
19 committed person shall have the right to be present and to have
20 an attorney represent him or her at the show cause hearing.

21 (c) If the court at the show cause hearing determines that
22 probable cause exists to believe that the committed person's
23 diagnosed mental disorder has so changed that he or she is not a
24 danger to the health and safety of others and is not likely to
25 engage in sexually violent criminal behavior if discharged, then
26 the court shall set a hearing on the issue.

27 (d) At the hearing, the committed person shall have the right to
28 be present and shall be entitled to the benefit of all constitutional
29 protections that were afforded to him or her at the initial
30 commitment proceeding. The attorney designated by the county
31 pursuant to subdivision (i) of Section 6601 shall represent the
32 state and shall have the right to demand a jury trial and to have
33 the committed person evaluated by experts chosen by the state.
34 The committed person also shall have the right to demand a jury
35 trial and to have experts evaluate him or her on his or her behalf.
36 The court shall appoint an expert if the person is indigent and
37 requests an appointment. The burden of proof at the hearing shall
38 be on the state to prove beyond a reasonable doubt that the
39 committed person's diagnosed mental disorder remains such that
40 he or she is a danger to the health and safety of others and is

1 likely to engage in sexually violent criminal behavior if
2 discharged.

3 (e) If the court or jury rules against the committed person at
4 the hearing conducted pursuant to subdivision (d), the term of
5 commitment of the person shall run for ~~a~~ *an indeterminate* period
6 ~~of two years~~ from the date of this ruling. If the court or jury rules
7 for the committed person, he or she shall be unconditionally
8 released and unconditionally discharged.

9 (f) In the event that the State Department of Mental Health has
10 reason to believe that a person committed to it as a sexually
11 violent predator is no longer a sexually violent predator, it shall
12 seek judicial review of the person's commitment pursuant to the
13 procedures set forth in Section 7250 in the superior court from
14 which the commitment was made. If the superior court
15 determines that the person is no longer a sexually violent
16 predator, he or she shall be unconditionally released and
17 unconditionally discharged.

18 SEC. 4. Section 6608 of the Welfare and Institutions Code is
19 amended to read:

20 6608. (a) Nothing in this article shall prohibit the person who
21 has been committed as a sexually violent predator from
22 petitioning the court for conditional release and subsequent
23 unconditional discharge without the recommendation or
24 concurrence of the Director of Mental Health. If a person has
25 previously filed a petition for conditional release without the
26 concurrence of the director and the court determined, either upon
27 review of the petition or following a hearing, that the petition
28 was frivolous or that the committed person's condition had not so
29 changed that he or she would not be a danger to others in that it is
30 not likely that he or she will engage in sexually violent criminal
31 behavior if placed under supervision and treatment in the
32 community, then the court shall deny the subsequent petition
33 unless it contains facts upon which a court could find that the
34 condition of the committed person had so changed that a hearing
35 was warranted. Upon receipt of a first or subsequent petition
36 from a committed person without the concurrence of the director,
37 the court shall endeavor whenever possible to review the petition
38 and determine if it is based upon frivolous grounds and, if so,
39 shall deny the petition without a hearing. The person petitioning

1 for conditional release and unconditional discharge under this
2 subdivision shall be entitled to assistance of counsel.

3 (b) The court shall give notice of the hearing date to the
4 attorney designated in subdivision (i) of Section 6601, the
5 retained or appointed attorney for the committed person, and the
6 Director of Mental Health at least 15 court days before the
7 hearing date.

8 (c) No hearing upon the petition shall be held until the person
9 who is committed has been under commitment for confinement
10 and care in a facility designated by the Director of Mental Health
11 for not less than one year from the date of the order of
12 commitment.

13 (d) The court shall hold a hearing to determine whether the
14 person committed would be a danger to the health and safety of
15 others in that it is likely that he or she will engage in sexually
16 violent criminal behavior due to his or her diagnosed mental
17 disorder if under supervision and treatment in the community. If
18 the court at the hearing determines that the committed person
19 would not be a danger to others due to his or her diagnosed
20 mental disorder while under supervision and treatment in the
21 community, the court shall order the committed person placed
22 with an appropriate forensic conditional release program
23 operated by the state for one year. A substantial portion of the
24 state-operated forensic conditional release program shall include
25 outpatient supervision and treatment. The court shall retain
26 jurisdiction of the person throughout the course of the program.
27 At the end of one year, the court shall hold a hearing to
28 determine if the person should be unconditionally released from
29 commitment on the basis that, by reason of a diagnosed mental
30 disorder, he or she is not a danger to the health and safety of
31 others in that it is not likely that he or she will engage in sexually
32 violent criminal behavior. The court shall not make this
33 determination until the person has completed at least one year in
34 the state-operated forensic conditional release program. The
35 court shall notify the Director of Mental Health of the hearing
36 date.

37 (e) Before placing a committed person in a state-operated
38 forensic conditional release program, the community program
39 director designated by the State Department of Mental Health
40 shall submit a written recommendation to the court stating which

1 forensic conditional release program is most appropriate for
2 supervising and treating the committed person. If the court does
3 not accept the community program director's recommendation,
4 the court shall specify the reason or reasons for its order on the
5 record. The procedures described in Sections 1605 to 1610,
6 inclusive, of the Penal Code shall apply to the person placed in
7 the forensic conditional release program.

8 (f) If the court determines that the person should be transferred
9 to a state-operated forensic conditional release program, the
10 community program director, or his or her designee, shall make
11 the necessary placement arrangements and, within 21 days after
12 receiving notice of the court's finding, the person shall be placed
13 in the community in accordance with the treatment and
14 supervision plan unless good cause for not doing so is presented
15 to the court.

16 (g) If the court rules against the committed person at the trial
17 for unconditional release from commitment, the court may place
18 the committed person on outpatient status in accordance with the
19 procedures described in Title 15 (commencing with Section
20 1600) of Part 2 of the Penal Code.

21 (h) If the court denies the petition to place the person in an
22 appropriate forensic conditional release program or if the petition
23 for unconditional discharge is denied, the person may not file a
24 new application until one year has elapsed from the date of the
25 denial.

26 (i) In any hearing authorized by this section, the petitioner
27 shall have the burden of proof by a preponderance of the
28 evidence.

29 (j) If the petition for conditional release is not made by the
30 director of the treatment facility to which the person is
31 committed, no action on the petition shall be taken by the court
32 without first obtaining the written recommendation of the
33 director of the treatment facility.

34 ~~(k) Time spent in a conditional release program pursuant to~~
35 ~~this section shall not count toward the term of commitment under~~
36 ~~this article unless the person is confined in a locked facility by~~
37 ~~the conditional release program, in which case the time spent in a~~
38 ~~locked facility shall count toward the term of commitment.~~